

DOCKET NO.: 273503US0PCT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: :

MICHEL DROUX, ET AL. : EXAMINER: HALPERN, MARK

SERIAL NO.: 10/541,121 :

FILED: JUNE 30, 2005 : GROUP ART UNIT: 1791

FOR: METHOD FOR MAKING A FIBER :
GLASS AND CELLULOSE MAT IN
CATIONIC MEDIUM

APPEAL BRIEF

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Further to the August 24, 2009 Notice of Appeal, this is an Appeal from the April 23, 2009 Final Rejection.

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is Saint-Gobain Technical Fabrics, Chambéry, France.

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The real party in interest in this appeal is Saint-Gobain Technical Fabrics, Chambéry, France.

II. RELATED APPEALS AND INTERFERENCES

Appellants, Appellants' legal representative and the assignee are aware of no appeals, interferences, or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 1-25 are pending.

Claims 18-20 have been withdrawn from consideration.

Claims 1-17 and 21-25 stand rejected.

The rejections of claims 1-17 and 21-25 are being appealed.

IV. STATUS OF AMENDMENTS

No Amendment After Final Rejection was filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is directed to a process for producing a veil including glass fibers and cellulose fibers. *See* present specification, page 1, lines 5 to 6. The process includes dispersing cellulose fibers and chopped glass fibers into a white water. *See* present specification, page 2, lines 9 to 10. The process also includes forming a bed in a forming device by passage of the dispersion over a forming fabric through which the white water is

drained off, the fibers being retained on the fabric and the dispersion comprising, during passage, a cationic white water. *See* present specification, page 2, lines 11 to 16. The process further includes performing a heat treatment in an oven device to form the veil. *See* present specification, page 2, line 18. The formed veil is homogeneous. *See* present specification, page 1, lines 27 to 30. Claims 2-17 depend directly or indirectly from claim 1. *See* claims 2-17.

Claim 21 is directed to a process for producing a veil including glass fibers and cellulose fibers. *See* present specification, page 1, lines 5 to 6. The process includes dispersing cellulose fibers and chopped glass fibers into a white water. *See* present specification, page 2, lines 9 to 10. The process also includes forming a bed in a forming device by passage of the dispersion over a forming fabric through which the white water is drained off, the fibers being retained on the fabric and the dispersion comprising, during passage, a cationic white water. *See* present specification, page 2, lines 11 to 16. The process further includes performing a heat treatment in an oven device to form the veil. *See* present specification, page 2, line 18. A binder or binder precursor is added to the dispersion before forming the bed, or applied to the formed bed before performing the heat treatment. *See* present specification, page 5, lines 11 to 17. The formed veil is homogeneous. *See* present specification, page 1, lines 27 to 30. The formed veil includes 2 to 12 wt % cellulose fibers, 70 to 80 wt % glass fibers, and 8 to 27 wt % binder. *See* present specification, page 5, lines 21 to 24. Claim 22 depends from claim 21. *See* claim 22.

Claim 23 is directed to a process for producing a dry veil comprising glass fibers and cellulose fibers. *See* present specification, page 1, lines 5 to 6. The process includes dispersing cellulose fibers and chopped glass fibers into a white water. *See* present

specification, page 2, lines 9 to 10. The process also includes forming a bed in a forming device by passage of the dispersion over a forming fabric through which the white water is drained off, the fibers being retained on the fabric. *See* present specification, page 2, lines 11 to 16. The process further includes performing a heat treatment in an oven device to form the dry veil. *See* present specification, page 2, line 18. A binder or binder precursor is added to the dispersion before forming the bed, or applied to the formed bed before performing the heat treatment. *See* present specification, page 5, lines 11 to 17. The white water is cationic and contains the fibers in an individual state during passage through the bed. *See* present specification, page 3, lines 20 to 26. The formed veil is homogeneous. *See* present specification, page 1, lines 27 to 30. Claims 24 and 25 depend directly or indirectly from claim 23. *See* claims 24 and 25.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Rejection Under 35 U.S.C. §112, Second Paragraph

Claims 1-17 and 21-25 are rejected under the written description requirement of 35 U.S.C. §112, first paragraph.

B. Rejection Under 35 U.S.C. §112, First Paragraph

Claims 1-17 and 21-25 are rejected as indefinite under 35 U.S.C. §112, second paragraph.

C. Rejection Under 35 U.S.C. §102/103

Claims 1-17 and 21-25 are rejected under 35 U.S.C. §102(b), or in the alternative under 35 U.S.C. §103(a), over U.S. Patent No. 5,837,620 to Kajander ("Kajander").

VII. ARGUMENT

Appellants submit that the outstanding rejections should be reversed for the following reasons.

A. Rejection Under 35 U.S.C. §112, First Paragraph

As indicated above, claims 1-17 and 21-25 are rejected under the written description requirement of 35 U.S.C. §112, first paragraph. Appellants respectfully request that the rejection be reversed.

The Examiner asserts that the phrase "the formed veil is homogeneous" in each of claims 1, 21 and 23 is not supported by the specification as filed. *See* April 23, 2009 Office Action, page 3. Appellants respectfully disagree.

In the April 9, 2009, the present specification was amended as follows:

The Applicant has discovered that the nature of the ionicity of the white water during passage of the suspension comprising the two types of fiber over the forming fabric assumes great importance in respect of the quality of the dispersion itself and consequently the ~~uniformity~~ homogeneity of the veil formed.

See April 9, 2009 Amendment, page 2. The above amendment was made to provide a more correct translation of the original French text of International Application No. PCT/FR04/00014, of which the present application is the U.S. National Stage. The

Declaration of Charles ANDERSON ("Declaration") (copy attached) was discussed in the April 9, 2009 Amendment and submitted on April 27, 2009. The Declaration demonstrates that one knowledgeable in the French and English languages would understand that the amended language described above is a more correct translation of the original French text of International Application No. PCT/FR04/00014. *See* Declaration, paragraphs 2 to 6. Accordingly, the term "homogeneity," as most correctly translated, appears in International Application No. PCT/FR04/00014, as filed.

Thus, while the term "homogeneity" does not appear in the English-language text of the present application as submitted upon entry into the U.S. National Stage, the phrase "the formed veil is homogeneous" in each of claims 1, 21 and 23 is fully supported by the original French text of International Application No. PCT/FR04/00014, as correctly translated in the amended text set forth above.

Claims 2-17, 22, 24 and 25 are rejected solely for their dependency from claims 1, 21 and 23.

In view of the foregoing, reversal of the rejection is respectfully requested.

B. Rejection Under 35 U.S.C. §112, Second Paragraph

As indicated above, claims 1-17 and 21-25 are rejected as indefinite under 35 U.S.C. §112, second paragraph. Appellants respectfully request that the rejection be reversed.

The Examiner asserts that the phrase "the formed veil is homogeneous" in each of claims 1, 21 and 23 is not clear because it is not supported by the specification as filed. *See* April 23, 2009 Office Action, page 4. Appellants submit that the phrase "the formed veil is

homogeneous" is supported by the specification as filed for at least the reasons discussed in Section VII.A above.

In addition, Appellants submit that the question of whether a claim is adequately supported by the specification as filed, pursuant to 35 U.S.C. §112, first paragraph, is separate from the issue of whether a claim is definite, pursuant to 35 U.S.C. §112, second paragraph. The Examiner has not provided any reasons why the metes and bounds of the phrase "the formed veil is homogeneous" in each of claims 1, 21 and 23 would not be apparent to a skilled artisan. Appellants submit that claims 1, 21 and 23 meet threshold requirements of clarity and precision.

Claims 2-17, 22, 24 and 25 are rejected solely for their dependency from claims 1, 21 and 23.

In view of the foregoing, reversal of the rejection is respectfully requested.

C. Rejection Under 35 U.S.C. §103

As indicated above, claims 1-17 and 21-25 are rejected under 35 U.S.C. §102(b), or in the alternative under 35 U.S.C. §103(a), over Kajander. Appellants respectfully request that the rejection be reversed.

1. Claim 1

Claim 1 recites "[a] process for producing a veil comprising glass fibers and cellulose fibers, comprising: dispersing cellulose fibers and chopped glass fibers into a white water; forming a bed in a forming device by passage of the dispersion over a forming fabric through

which the white water is drained off, the fibers being retained on the fabric and the dispersion comprising, during passage, a cationic white water; and performing a heat treatment in an oven device to form the veil; wherein the formed veil is homogeneous" (emphasis added). Kajander does not disclose or suggest such a process.

Claim 1 requires that cellulose fibers and chopped glass fibers be dispersed into a white water to form a homogeneous veil. The Examiner asserts that Kajander discloses mixing chopped glass fibers and cellulosic fibers into a slurry stream of whitewater to create a web. *See* April 23, 2009 Office Action, page 5. At the outset, Kajander provides no disclosure of a slurry including both chopped glass fibers and cellulosic fibers. Every slurry specifically disclosed in Kajander includes only glass fibers. *See* Kajander, Examples. While Kajander indicates that cellulosic fibers may be used (*see, e.g.,* Kajander, column 3, lines 16 to 20), there is no indication in Kajander that cellulosic fibers could or should be added to the slurry along with glass fibers to form the disclosed web.

Rather, Kajander suggests that cellulosic fibers should not be incorporated into the slurry to form the disclosed mat. Kajander indicates, in particular, that "it is particularly advantageous to have a higher concentration of cellulosic fibers on one or both surface portions of the mat." *See* Kajander, column 3, lines 23 to 28. Thus, in Kajander, the cellulosic fibers are not applied along with the glass fibers to form the disclosed mat – doing so would prevent a concentration gradient from being formed. Rather, the cellulosic fibers must be applied before and/or after the slurry including glass fibers to obtain the described concentration gradient. Kajander provides no specific disclosure of employing a slurry including both glass fibers and cellulosic fibers, and the only suggestion with respect to

cellulosic fibers is that they be used separately from glass fibers to achieve higher concentrations at the surfaces of the described mat.

Moreover, as emphasized above, the veil obtained in claim 1 is homogenous. While Kajander could possibly be construed as disclosing a homogenous mat including glass fibers alone, Kajander's only disclosure with respect to a mat including both glass fibers and cellulosic fibers indicates that the mat should not be homogenous, but rather should have a concentration gradient.

The Board of Patent Appeals and Interferences has stated "... [t]he *KSR* Court noted that obviousness cannot be proven merely by showing that the elements of a claimed device were known in the prior art; it must be shown that those of ordinary skill in the art would have had some 'apparent reason to combine the known elements in the fashion claimed.'" *Ex parte Whalen*, 89 USPQ2d 1078, 1084 (Bd. Pat. App. & Int. 2008). The Examiner has simply failed to articulate an apparent why one of ordinary skill in the art would have ignored the explicit teachings of Kajander, and provided both glass fibers and cellulosic fibers in a slurry together to obtain a homogeneous veil.

Kajander does not anticipate claim 1, and a *prima facie* case of obviousness of claim 1 over Kajander has not been made.

Claim 1 is not anticipated by and would not have been rendered obvious by Kajander. Claims 2-17 depend from claim 1, and, thus, also are not anticipated by and would not have been rendered obvious by Kajander. Accordingly, reversal of the rejection is respectfully requested.

2. Claim 21

Claim 21 recites "[a] process for producing a veil comprising glass fibers and cellulose fibers, comprising: dispersing cellulose fibers and chopped glass fibers into a white water; forming a bed in a forming device by passage of the dispersion over a forming fabric through which the white water is drained off, the fibers being retained on the fabric and the dispersion comprising, during passage, a cationic white water; and performing a heat treatment in an oven device to form the veil; wherein: a binder or binder precursor is added to the dispersion before forming the bed, or applied to the formed bed before performing the heat treatment; the formed veil is homogeneous; and the formed veil comprises 2 to 12 wt % cellulose fibers, 70 to 80 wt % glass fibers, and 8 to 27 wt % binder" (emphasis added). Kajander does not disclose or suggest such a process.

Claim 21 distinguishes over Kajander for at least the reasons discussed above with respect to claim 1. However, claim 21 further requires that the formed veil includes 2 to 12 wt % of cellulose fibers. Kajander states only that "a minor portion of non-glass fibers may be used." See Kajander, column 3, lines 17 to 18. MPEP §2131.03 states that "[w]hen the prior art discloses a range which touches or overlaps the claimed range, but no specific examples falling within the claimed range are disclosed ... the claimed subject matter must be disclosed in the reference with 'sufficient specificity to constitute an anticipation'" Kajander does not disclose the range of claim 21 or provide examples falling within such range.

Also, Kajander provides no indication that the amount of cellulosic fibers would have any effect on the performance of the obtained mat. As is well-settled, a particular parameter must first be recognized as a result-effective variable before the determination of workable ranges can be said to be an obvious variation. See, e.g., MPEP §2144.05.II.B (citing *In re*

Antonie, 195 U.S.P.Q. 6 (C.C.P.A. 1977)). The Examiner fails to identify, in Kajander or any other reference, recognition that the amount of cellulosic fibers is a result-effective variable.

Kajander does not anticipate claim 21, and a *prima facie* case of obviousness of claim 21 over Kajander has not been made.

However, even if a *prima facie* case were made, such case is rebutted by the results shown in the present specification – "[a] *prima facie* case of obviousness ... is rebuttable by proof that the claimed compounds possess unexpectedly advantageous or superior properties." See MPEP §2144.09 (citing *In re Papesch*, 315 F.2d 381 (C.C.P.A. 1963)). The Examples of the present specification demonstrate that veils including cellulose fibers in the range of amounts required by claim 21 have substantially higher tear strength (19% higher) than veils including cellulose fibers in amounts above or below the range of amounts required by claim 21. See present specification, page 8, lines 5 to 12. These results are objective evidence of the improvements of the process of claim 21 over known processes, such as described in Kajander, and thus these results rebut any suggestion that it would have been obvious to modify the process of Kajander to obtain the process of claim 21.

As explained, claim 21 is not anticipated by and would not have been rendered obvious by Kajander. Claim 22 depends from claim 21 and, thus, also is not anticipated by and would not have been rendered obvious by Kajander. Accordingly, reversal of the rejection is respectfully requested.

3. Claim 23

Claim 23 recites "[a] process for producing a dry veil comprising glass fibers and cellulose fibers, comprising: dispersing cellulose fibers and chopped glass fibers into a white

water; forming a bed in a forming device by passage of the dispersion over a forming fabric through which the white water is drained off, the fibers being retained on the fabric; and performing a heat treatment in an oven device to form the dry veil; wherein: a binder or binder precursor is added to the dispersion before forming the bed, or applied to the formed bed before performing the heat treatment; the white water is cationic and contains the fibers in an individual state during passage through the bed; and the formed veil is homogeneous" (emphasis added). Kajander does not disclose or suggest such a process.

Claim 23 distinguishes over Kajander for at least the reasons discussed above with respect to claim 1. In addition, claim 23 requires that a dry veil be obtained. Kajander is explicitly directed to a method in which uncured or wet mats are formed, and the wet mats are adhered to a layer of wood and then cured or dried. See Kajander, column 2, lines 25 to 38, column 4, lines 24 to 38. No reasonable interpretation of the term "veil" would include a wood composite.

The procedure in Example 1 of Kajander, where a mat (without cellulosic fibers) is fully cured in the absence of a layer of wood, is indicated to yield an inferior product. Compare Kajander, column 5, lines 28 to 29 and column 5, lines 59 to 62. Kajander plainly teaches away from practicing a method in which a fully cured mat is obtained. As Kajander is directed to either a wet mat or a dry composite, but never a dry veil, Kajander fails to disclose or suggest each and every feature of claim 23.

Claim 23 further requires that the white water contains the fibers in an individual state during passage through the bed. Kajander does not remotely disclose or suggest providing fibers in such state.

Kajander does not anticipate claim 23, and a *prima facie* case of obviousness of claim 23 over Kajander has not been made.

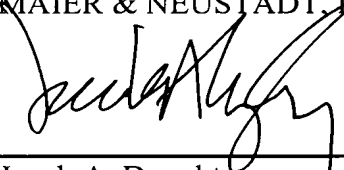
As explained, claim 23 is not anticipated by and would not have been rendered obvious by Kajander. Claims 24 and 25 depend from claim 21 and, thus, also are not anticipated by and would not have been rendered obvious by Kajander. Accordingly, reversal of the rejection is respectfully requested.

VIII. CONCLUSION

For the above reasons, it is respectfully requested that all outstanding rejections of the pending claims be REVERSED.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Jacob A. Doughty
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CLAIMS APPENDIX

Claim 1 (Previously Presented): A process for producing a veil comprising glass fibers and cellulose fibers, comprising:

dispersing cellulose fibers and chopped glass fibers into a white water;

forming a bed in a forming device by passage of the dispersion over a forming fabric through which the white water is drained off, the fibers being retained on the fabric and the dispersion comprising, during passage, a cationic white water; and

performing a heat treatment in an oven device to form the veil;

wherein the formed veil is homogeneous.

Claim 2 (Previously Presented): The process as claimed in claim 1 wherein during passage of the dispersion over the forming fabric, the white water is cationic from 1.10^{-4}N to 1.10^{-3}N .

Claim 3 (Previously Presented): The process as claimed in claim 2, wherein during passage of the dispersion over the forming fabric, the white water is cationic from $1.5.10^{-4}\text{N}$ to 4.10^{-4}N .

Claim 4 (Previously Presented): The process as claimed in claim 1, wherein the process is continuous, the white water being recycled and exhibiting cationicity throughout its circulation loop.

Claim 5 (Previously Presented): The process as claimed in claim 1, wherein the white water includes a cationic dispersant.

Claim 6 (Previously Presented): The process as claimed in claim 1 wherein during passage of the dispersion over the forming fabric, the sum of the mass of the fibers represents 0.01 to 0.5% by weight of said dispersion.

Claim 7 (Previously Presented): The process as claimed in claim 1, wherein during passage of the dispersion over the forming fabric, the sum of the mass of the fibers represents 0.02 to 0.05% by weight of said dispersion.

Claim 8 (Previously Presented): The process as claimed in claim 1, wherein during passage of the dispersion over the forming fabric, the white water has a viscosity at 20° C of between 1 and 20 mPa.s.

Claim 9 (Previously Presented): The process as claimed in claim 1 wherein during passage of the dispersion over the forming fabric, the white water has a viscosity at 20 ° C of between 3 and 16 mPa.s.

Claim 10 (Previously Presented): The process as claimed in claim 1, wherein the process includes a step comprising a binder deposition device between the formation of the bed and the heat treatment.

Claim 11 (Previously Presented): The process as claimed in claim 1, wherein the heat treatment is carried out between 140 and 250° C.

Claim 12 (Previously Presented): The process as claimed in claim 1, wherein the final veil comprises 2 to 12% cellulose, 70 to 80% glass, and 8 to 27% binder.

Claim 13 (Previously Presented): The process as claimed in claim 1, wherein the final veil has a weight per unit area ranging from 20 to 150 g/m².

Claim 14 (Previously Presented): The process as claimed in claim 1, wherein the final veil has a weight per unit area ranging from 30 to 130 g/m².

Claim 15 (Previously Presented): The process as claimed in claim 1 wherein the cellulose fiber is introduced into the white water in the form of a water/pulp mixture.

Claim 16 (Previously Presented): The process as claimed in claim 1, wherein the cellulose is not treated with a cationic polymer before being introduced into the white water.

Claim 17 (Previously Presented): The process as claimed in claim 1, wherein neither the cellulose fiber nor the glass fiber is treated by a cationic species before the fibers are introduced into the white water.

Claim 18 (Withdrawn): A veil comprising 2 to 12% cellulose, 70 to 80% glass, and 8 to 27% binder, the tear strength of which is greater than 430 gf as measured by the ISO 1974 standard.

Claim 19 (Withdrawn): The veil as claimed in claim 18, wherein the tear strength is greater than 450 gf as measured by the ISO 1974 standard.

Claim 20 (Withdrawn): The veil as claimed in claim 18, wherein the tensile strength is greater than 22 kgf as measured according to the ISO 3342 standard adapted so that the width of the jig for cutting the test piece is 50 mm and the speed of movement of the grippers is 50 mm/min \pm 5 mm/min.

Claim 21 (Previously Presented): A process for producing a veil comprising glass fibers and cellulose fibers, comprising:

dispersing cellulose fibers and chopped glass fibers into a white water;

forming a bed in a forming device by passage of the dispersion over a forming fabric through which the white water is drained off, the fibers being retained on the fabric and the dispersion comprising, during passage, a cationic white water; and

performing a heat treatment in an oven device to form the veil;

wherein:

a binder or binder precursor is added to the dispersion before forming the bed, or applied to the formed bed before performing the heat treatment;

the formed veil is homogeneous; and

the formed veil comprises 2 to 12 wt % cellulose fibers, 70 to 80 wt % glass fibers, and 8 to 27 wt % binder.

Claim 22 (Previously Presented): The process as claimed in claim 21, wherein the formed veil has a tear strength greater than 430 gf as measured by the ISO 1974 standard.

Claim 23 (Previously Presented): A process for producing a dry veil comprising glass fibers and cellulose fibers, comprising:

dispersing cellulose fibers and chopped glass fibers into a white water;

forming a bed in a forming device by passage of the dispersion over a forming fabric through which the white water is drained off, the fibers being retained on the fabric; and performing a heat treatment in an oven device to form the dry veil;

wherein:

a binder or binder precursor is added to the dispersion before forming the bed, or applied to the formed bed before performing the heat treatment;

the white water is cationic and contains the fibers in an individual state during passage through the bed; and

the formed veil is homogeneous.

Claim 24 (Previously Presented): The process of as claimed in claim 23, wherein the fibers are in the form of completely dispersed filaments in the dry veil.

Claim 25 (Previously Presented): The process as claimed in claim 24, wherein the formed veil comprises 2 to 12 wt % cellulose fibers, 70 to 80 wt % glass fibers, and 8 to 27 wt % binder.

EVIDENCE APPENDIX

Provided herewith is a copy of the Declaration filed on April 27, 2009. The contents of the Declaration were considered by the Examiner, for example, in the November 2, 2009 Advisory Action (*see* continuation sheet). The Examiner confirmed that the Declaration was entered for the purposes of appeal in a telephone conference subsequent to issuance of the November 2, 2009 Advisory Action.

RELATED PROCEEDINGS APPENDIX

None.

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DECLARATION

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

I, Charles ANDERSON, hereby declare:

1. I am an employee of Saint-Gobain Recherche, an affiliate of the assignee of the above-captioned patent application.
2. I know well both the French and English languages.
3. I have reviewed the text of the above-captioned patent application as filed, which is in the English language, and I have reviewed the text of International Patent Application No. PCT/FR04/00014, which is in the French language.
4. I understand the above-captioned patent application is a translation of International Patent Application No. PCT/FR04/00014.
5. The phrase "... the quality of the dispersion itself and consequently the uniformity of the veil formed," at page 1, lines 29 to 30, of the above-captioned patent application, is translated from the phrase "... la qualité de la dispersion elle-même et en

conséquence pour l'homogénéité du voile formé," at page 1, lines 33 to 34 of International Patent Application No. PCT/FR04/00014.

6. The translation described above is more correctly "... the quality of the dispersion itself and consequently the homogeneity of the veil formed."

7. All statements made herein of my own knowledge are true, and all statements made on information and belief are believed to be true; these statements were made with the knowledge that willful false statements are punishable by fine and/or imprisonment under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing therefrom.

Date: April 8, 2009


Charles ANDERSON